

## SENATE BILL NO. 363

INTRODUCED BY WILLIAMS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS RELATING TO SPECIAL EDUCATION; CLARIFYING THAT SCHOOL DISTRICTS MAY OFFER SPECIAL EDUCATION PROGRAMS FOR STUDENTS WHO ARE OUTSIDE OF THE REQUIRED AGES; REMOVING REQUIREMENTS THAT THE SUPERINTENDENT OF PUBLIC INSTRUCTION RECOMMEND AND APPROVE SCHOOL DISTRICT SPECIAL EDUCATION PROGRAMS; REPLACING THE TERM "DIAGNOSING" WITH "IDENTIFYING"; REVISING SPECIAL EDUCATION TUITION AND TRANSPORTATION STATUTES TO BE CONSISTENT WITH OTHER TUITION AND TRANSPORTATION STATUTES; CLARIFYING THAT SCHOOL DISTRICTS DO NOT NEED APPROVAL TO PROVIDE A FREE AND APPROPRIATE EDUCATION FOR SPECIAL EDUCATION STUDENTS; ENSURING THAT SCHOOL DISTRICTS MAY RECEIVE FUNDING FOR SPECIAL EDUCATION FOR STUDENTS WITH DISABILITIES WHO ARE UNDER 6 YEARS OF AGE; SHORTENING THE TIME PERIOD FOR APPOINTING A SURROGATE PARENT; MAKING THE REVISIONS NECESSARY TO COMPLY WITH THE REAUTHORIZATION OF THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT; AMENDING SECTIONS 20-7-402, 20-7-403, 20-7-411, 20-7-414, 20-7-420, 20-7-431, 20-7-443, 20-7-461, AND 20-10-144, MCA; REPEALING SECTIONS 20-7-412, 20-7-441, AND 20-7-442, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 20-7-402, MCA, is amended to read:

**"20-7-402. Special education to comply with board policies.** (1) The conduct of special education programs ~~shall~~ must comply with the policies recommended by the superintendent of public instruction and adopted by the board of public education. These policies ~~shall assure~~ must ensure and include but are not limited to:

- (a) placement of a child with a disability in the least restrictive ~~alternative setting~~ environment;
- (b) due process for a child with a disability, including the appointment of a surrogate parent if necessary;
- (c) use of ~~child study teams~~ an evaluation team to identify a child with a disability and ~~use of instructional teams~~ to plan individual education programs;

(d) ~~comprehensive evaluation for each child with a disability~~ an evaluation process consistent with the requirements of the Individuals with Disabilities Education Act; and

(e) other policies needed to ensure a free appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education."

**Section 2.** Section 20-7-403, MCA, is amended to read:

**"20-7-403. Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and coordinate the conduct of special education in the state by:

(1) recommending to the board of public education adoption of those policies necessary to establish a planned and coordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for the teachers as prescribed by the board of public education;

(4) establishing procedures to be used by school district personnel in identifying a child with a disability;

(5) ~~recommending to districts the type of special education class or program needed to serve the child with a disability of the districts and preparing appropriate guides for developing individualized education programs~~ technical assistance documents to assist local districts in implementing special education policies and procedures;

(6) seeking for local districts appropriate interdisciplinary assistance from public and private agencies in ~~diagnosing~~ identifying the special education needs of children, in planning programs, and in admitting and discharging children from those programs;

(7) assisting local school districts, institutions, and other agencies in developing full-service programs for a child with a disability;

(8) ~~approving, as they are proposed and annually after approval, those special education classes or programs that comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;~~

~~(9)~~(8) providing technical assistance to district superintendents, principals, teachers, and trustees;

~~(10)~~(9) conducting conferences, offering advice, and otherwise cooperating with parents and other interested persons;

(11) ensuring appropriate training and instructional material for persons appointed as surrogate parents that outlines their duties toward the child, limitations on what they may do for the child, duties in relation to the child's records, sources of assistance available to the surrogate parent, and the need to seek competent legal assistance in implementing hearing or appeal procedures;

(12) ensuring that the requirements of the Individuals With Disabilities Education Act are met and that each educational program for a child with a disability, including a homeless child with a disability, administered within the state, including each program administered by any other agency, is under the general supervision of the superintendent of public instruction, meets the education standards of the board of public education, and meets the requirements of the superintendent of public instruction, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education or for providing or paying for some or all of the costs of a free appropriate public education to a child with a disability within the state;

(13) contracting for the delivery of audiological services to those children allowed by Montana law in accordance with policies of the board of public education; and

(14) except for those children who qualify for residential services under the Montana public mental health program pursuant to Title 53, chapter 6, contracting with a public school district or a private residential facility for the provision of a free appropriate public education for a child placed in an in-state residential facility or children's psychiatric hospital."

**Section 3.** Section 20-7-411, MCA, is amended to read:

**"20-7-411. Regular classes preferred -- obligation to establish special education program.** (1) A child with a disability in Montana is entitled to a free appropriate public education provided in the least restrictive alternative setting environment. To the maximum extent appropriate, a child with a disability, including a child in a public or private institution or other care facility, must be educated with children who do not have disabilities. Separate schooling or other removal of a child with a disability from the regular educational environment may occur only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(2) The board of trustees of every school district shall provide or establish and maintain a special education program for each child with a disability ~~between the ages of 6 and 18, inclusive~~ who is 6 years of age or older and under 19 years of age.

(3) The board of trustees of each elementary district shall provide or establish and maintain a special education program for each preschool child with a disability ~~between the ages of 3 and 6, inclusive~~ who is 3 years of age or older and under 7 years of age.

(4) (A) The board of trustees of a school district may provide or establish and maintain a special education program for a child with a disability who is 2 years of age or under or who is 19 years of age or older and under 22 years of age.

(B) PROGRAMS ESTABLISHED PURSUANT TO SUBSECTION (4)(A) DO NOT OBLIGATE THE STATE OR A SCHOOL DISTRICT TO OFFER REGULAR EDUCATIONAL PROGRAMS TO A SIMILAR AGE GROUP UNLESS SPECIFICALLY PROVIDED BY LAW.

~~(4)~~(5) The board of trustees of a school district may meet its obligation to serve persons with disabilities by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program.

~~(5)~~(6) The trustees of a school district shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as a part of the child's special education services, related services, or supplementary aids."

**Section 4.** Section 20-7-414, MCA, is amended to read:

**"20-7-414. Determination of children in need and type of special education needed --approval of classes and programs by superintendent.** (1) The determination of the children requiring special education and the type of special education needed by these children is the responsibility of the school district, and the determination must be made in compliance with the procedures established in the rules of the superintendent of public instruction. The school district shall make available a free appropriate public education, in accordance with 20-7-411, to all children who are eligible under the Individuals With Disabilities Education Act and who reside in the school district.

(2) ~~Whenever the trustees of a district intend to establish a special education class or program, they shall apply for approval and funding of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of public education, and the rules of the superintendent of public instruction. A special education class may not be operated by the trustees without the approval of the superintendent of public~~

1 ~~instruction. Each special education class or program must be approved annually to be funded as part of the~~  
2 ~~allowable cost payment for special education. The trustees of a school district shall establish and implement~~  
3 ~~policies and procedures for the conduct of special education that are consistent with the Individuals with~~  
4 ~~Disabilities Education Act and with state laws and rules of the board of public education and the superintendent~~  
5 ~~of public instruction."~~  
6

7 **Section 5.** Section 20-7-420, MCA, is amended to read:

8 **"20-7-420. Residency requirements -- financial responsibility for special education.** (1) In  
9 accordance with the provisions of 1-1-215, a child's district of residence for special education purposes is the  
10 residence of the child's parents or of the child's guardian if the parents are deceased, unless otherwise  
11 determined by the court. This applies to a child living at home, in an institution, or under foster care. If the parent  
12 has left the state, the parent's last-known district of residence is the child's district of residence.

13 (2) The county of residence is financially responsible for tuition and transportation as established under  
14 20-5-323 and 20-5-324 for a child with a disability, as defined in 20-7-401, who attends school outside the district  
15 and county of residence because the student has been placed by a state agency in a foster care or group home  
16 licensed by the state. The county of residence is not financially responsible for tuition and transportation for a  
17 child who is placed by a state agency in an out-of-state public school or an out-of-state private residential facility.

18 (3) If an eligible child, as defined in 20-7-436, is receiving inpatient treatment in an in-state residential  
19 treatment facility or children's psychiatric hospital, as defined in 20-7-436, and the educational services are  
20 provided by a public school district under the provisions of 20-7-411 or 20-7-435, the superintendent of public  
21 instruction shall reimburse the district providing the services for the negotiated amount, as established pursuant  
22 to 20-7-435(5), that represents the district's costs of providing education and related services. Payments must  
23 be made from funds appropriated for this purpose. If the negotiated amount exceeds the daily membership rate  
24 under 20-7-435(3) and any per-ANB amount of direct state aid, the superintendent of public instruction shall pay  
25 the remaining balance from available funds. However, the amount spent from available funds for this purpose  
26 may not exceed \$500,000 during a biennium.

27 (4) A state agency that makes a placement of a child with a disability is responsible for the financial  
28 costs of room and board and the treatment of the child. The state agency that makes an out-of-state placement  
29 of a child with a disability is responsible for the education fees required to provide a free appropriate public  
30 education that complies with the requirements of Title 20, chapter 7, part 4."

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2       **Section 6.** Section 20-7-431, MCA, is amended to read:

3       **"20-7-431. Allowable cost schedule for special programs -- superintendent to make rules --**  
4 **annual accounting.** (1) For the purpose of determining the allowable cost payment amount for special education  
5 as defined in 20-9-321, the following allowable costs and reports must be reviewed by the superintendent of  
6 public instruction for the purposes of determining the amount of the allowable cost payment for special education  
7 payments and a district's special education expenditures:

8       (a) instruction: salaries, benefits, supplies, textbooks, and other expenses, including:

9       (i) the cost of salaries and benefits of special program teachers, regular program teachers, and teacher  
10 aides, corresponding to the working time that each person devotes to the special program;

11       (ii) the total cost of teaching supplies and textbooks for special programs;

12       (iii) the purchase, rental, repair, and maintenance of instructional equipment required to implement a  
13 student's individualized education program;

14       (iv) activities associated with teacher assistance teams that provide prereferral intervention;

15       (v) the cost of contracted services, including fees paid for professional advice and consultation  
16 regarding special students or the special program, and the delivery of special education services by public or  
17 private agencies;

18       (vi) transportation costs for special education instructional personnel who travel on an itinerant basis  
19 from school to school or district to district or to in-state ~~child study~~ evaluation team meetings or in-state  
20 individualized education program meetings;

21       (b) related services, including:

22       (i) the cost of salaries and benefits of professional supportive personnel, corresponding to the working  
23 time that each person devotes to the special program. Professional supportive personnel may include special  
24 education supervisors, speech-language pathologists, audiologists, counselors, social workers, psychologists,  
25 psychometrists, physicians, nurses, and physical and occupational therapists.

26       (ii) the cost of salaries and benefits of clerical personnel who assist professional personnel in supportive  
27 services, corresponding to the working time that each person devotes to the special program;

28       (iii) the cost of supplies for special programs;

29       (iv) activities associated with teacher assistance teams that provide prereferral interventions;

30       (v) the cost of contracted services, including fees paid for professional advice and consultation

1 regarding special students or the special program, and the delivery of special education services by public or  
2 private agencies;

3 (vi) transportation costs for special education-related services personnel who travel on an itinerant basis  
4 from school to school or district to district or to in-state ~~child study~~ evaluation team meetings or in-state  
5 individualized education program meetings;

6 (vii) equipment purchase, rental, repair, and maintenance required to implement a student's  
7 individualized education program;

8 (viii) the additional cost of special education cooperatives or joint boards, including operation and  
9 maintenance, travel, recruitment, and administration.

10 (2) The superintendent of public instruction shall adopt rules in accordance with the policies of the board  
11 of public education for keeping necessary records for supportive and administrative personnel and any  
12 personnel shared between special and regular programs.

13 (3) An annual accounting of all expenditures of school district general fund money for special education  
14 must be made by the district trustees on forms furnished by the superintendent of public instruction. The  
15 superintendent of public instruction shall make rules for the accounting.

16 (4) Allowable costs prescribed in this section do not include the costs of the teachers' retirement system,  
17 the public employees' retirement system, or the federal social security system or the costs for unemployment  
18 compensation insurance.

19 (5) Notwithstanding other provisions of the law, the superintendent of public instruction may not approve  
20 an allowable cost payment amount for special education that exceeds legislative appropriations. However, any  
21 unexpended balance from the first year of a biennial appropriation may be spent in the second year of the  
22 biennium in addition to the second year appropriation."  
23

24 **Section 7.** Section 20-7-443, MCA, is amended to read:

25 **"20-7-443. Financial assistance for under-six-year-old special education class or program.** Any  
26 ~~district operating an approved special education class or program~~ providing special education services for  
27 ~~children under the age of 6 years shall be~~ of age is eligible for financial assistance in accordance with 20-7-431  
28 ~~and for transportation reimbursement under 20-7-442~~ in accordance with Title 20, chapters 7 and 10, and rules  
29 adopted by the superintendent of public instruction."  
30

1           **Section 8.** Section 20-7-461, MCA, is amended to read:

2           **"20-7-461. Appointment and termination of appointment of surrogate parent.** (1) A school district  
3 or institution that provides education to a child with a disability shall adopt procedures to assign an individual  
4 to act as a surrogate parent for a child with a disability whenever the parents or guardian cannot be identified  
5 or, after reasonable efforts, the location of the parents cannot be discovered or if the child is a ward of the state.  
6 ~~The determination of need for a surrogate parent must be made within 10 days of the date on which the school~~  
7 ~~district or its designee or the governing authority of an institution or its designee learns of the presence of the~~  
8 ~~child in the district. If the child is in need of a surrogate parent, the trustees of a school district or their designee~~  
9 ~~or the governing authority of an institution or its designee shall nominate a surrogate for the child within 30 days~~  
10 ~~of that determination~~ Within 10 days of determining that a child is in need of a surrogate parent, the school  
11 district or its designee or the governing authority of an institution or its designee shall nominate a surrogate  
12 parent and deliver the appropriate documentation to the youth court.

13           (2) The person nominated as a surrogate parent must be an adult who is not an employee of a state  
14 or local educational agency that is providing educational services to the child. The surrogate parent may not  
15 have a vested interest that will conflict with the person's representation and protection of the child. The  
16 surrogate, whenever practicable, must be knowledgeable about the educational system, special education  
17 requirements, and the legal rights of the child in relation to the educational system. Whenever practicable, the  
18 surrogate parent must be familiar with the cultural or language background of the child.

19           (3) The nomination for appointment of a surrogate parent, along with all necessary supporting  
20 documents, must be submitted to the youth court for official appointment of the surrogate parent by the court.  
21 The trustees of a school district or their designee or the governing authority of an institution or its designee shall  
22 take all reasonable action to ensure that the youth court appoints or denies the appointment of a person  
23 nominated as a surrogate parent within ~~45~~ 20 days of the court's receipt of all necessary supporting documents.  
24 If the youth court denies an appointment, the trustees of a district or their designee or the governing authority  
25 of an institution or its designee shall nominate another person to be appointed as the surrogate parent. If the  
26 youth court fails to act within 20 days, the individual nominated is the surrogate parent for the child.

27           (4) The superintendent of public instruction shall adopt rules for a procedure to terminate the  
28 appointment of a surrogate parent when:

- 29           (a) a child's parents are identified;  
30           (b) the location of the parents is discovered;



- 1 (c) the child is no longer a ward of the state; or  
2 (d) the surrogate parent wishes to discontinue the appointment."

3  
4 **Section 9.** Section 20-10-144, MCA, is amended to read:

5 **"20-10-144. Computation of revenue and net tax levy requirements for district transportation fund**  
6 **budget.** Before the second Monday of August, the county superintendent shall compute the revenue available  
7 to finance the transportation fund budget of each district. The county superintendent shall compute the revenue  
8 for each district on the following basis:

9 (1) The "schedule amount" of the budget expenditures that is derived from the rate schedules in  
10 20-10-141 and 20-10-142 must be determined by adding the following amounts:

11 (a) the sum of the maximum reimbursable expenditures for all approved school bus routes maintained  
12 by the district (to determine the maximum reimbursable expenditure, multiply the applicable rate for each bus  
13 mile by the total number of miles to be traveled during the ensuing school fiscal year on each bus route approved  
14 by the county transportation committee and maintained by the district); plus

15 (b) the total of all individual transportation per diem reimbursement rates for the district as determined  
16 from the contracts submitted by the district multiplied by the number of pupil-instruction days scheduled for the  
17 ensuing school attendance year; plus

18 (c) any estimated costs for supervised home study or supervised correspondence study for the ensuing  
19 school fiscal year; plus

20 (d) the amount budgeted in the budget for the contingency amount permitted in 20-10-143, except if  
21 the amount exceeds 10% of the total of subsections (1)(a), (1)(b), and (1)(c) or \$100, whichever is larger, the  
22 contingency amount on the budget must be reduced to the limitation amount and used in this determination of  
23 the schedule amount; plus

24 (e) any estimated costs for transporting a child out of district when the child has mandatory approval  
25 to attend school in a district outside the district of residence.

26 (2) (a) The schedule amount determined in subsection (1) or the total transportation fund budget,  
27 whichever is smaller, is divided by 2 and is used to determine the available state and county revenue to be  
28 budgeted on the following basis:

29 (i) one-half is the budgeted state transportation reimbursement; ~~except that the state transportation~~  
30 ~~reimbursement for the transportation of special education pupils under the provisions of 20-7-442 must be 50%~~

1 ~~of the schedule amount attributed to the transportation of special education pupils; and~~

2 (ii) one-half is the budgeted county transportation fund reimbursement and must be financed in the  
3 manner provided in 20-10-146.

4 (b) When the district has a sufficient amount of fund balance for reappropriation and other sources of  
5 district revenue, as determined in subsection (3), to reduce the total district obligation for financing to zero, any  
6 remaining amount of district revenue and fund balance reappropriated must be used to reduce the county  
7 financing obligation in subsection (2)(a)(ii) and, if the county financing obligations are reduced to zero, to reduce  
8 the state financial obligation in subsection (2)(a)(i).

9 (c) The county revenue requirement for a joint district, after the application of any district money under  
10 subsection (2)(b), must be prorated to each county incorporated by the joint district in the same proportion as  
11 the ANB of the joint district is distributed by pupil residence in each county.

12 (3) The total of the money available for the reduction of property tax on the district for the transportation  
13 fund must be determined by totaling:

14 (a) anticipated federal money received under the provisions of 20 U.S.C. 7701, et seq., or other  
15 anticipated federal money received in lieu of that federal act;

16 (b) anticipated payments from other districts for providing school bus transportation services for the  
17 district;

18 (c) anticipated payments from a parent or guardian for providing school bus transportation services for  
19 a child;

20 (d) anticipated or reappropriated interest to be earned by the investment of transportation fund cash in  
21 accordance with the provisions of 20-9-213(4);

22 (e) anticipated revenue from coal gross proceeds under 15-23-703;

23 (f) anticipated oil and natural gas production taxes;

24 (g) anticipated local government severance tax payments for calendar year 1995 production;

25 (h) anticipated transportation payments for out-of-district pupils under the provisions of 20-5-320 through  
26 20-5-324;

27 (i) school district block grants distributed under section 244, Chapter 574, Laws of 2001;

28 (j) any other revenue anticipated by the trustees to be earned during the ensuing school fiscal year that  
29 may be used to finance the transportation fund; and

30 (k) any fund balance available for reappropriation as determined by subtracting the amount of the

1 end-of-the-year fund balance earmarked as the transportation fund operating reserve for the ensuing school  
2 fiscal year by the trustees from the end-of-the-year fund balance in the transportation fund. The operating  
3 reserve may not be more than 20% of the final transportation fund budget for the ensuing school fiscal year and  
4 is for the purpose of paying transportation fund warrants issued by the district under the final transportation fund  
5 budget.

6 (4) The district levy requirement for each district's transportation fund must be computed by:

7 (a) subtracting the schedule amount calculated in subsection (1) from the total preliminary transportation  
8 budget amount; and

9 (b) subtracting the amount of money available to reduce the property tax on the district, as determined  
10 in subsection (3), from the amount determined in subsection (4)(a).

11 (5) The transportation fund levy requirements determined in subsection (4) for each district must be  
12 reported to the county commissioners on the fourth Monday of August by the county superintendent as the  
13 transportation fund levy requirements for the district, and the levy must be made by the county commissioners  
14 in accordance with 20-9-142."

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16 NEW SECTION. **Section 10. Repealer.** Sections 20-7-412, 20-7-441, and 20-7-442, MCA, are  
17 repealed.

18  
19 NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2005.

20 - END -